
Section 8 Renewal Policy

*Guidance for the Renewal of
Project-Based Section 8 HAP Contracts*



Office of Multifamily Housing

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November 5, 2015_____
Effective Date

Chapter Eleven

Tenant Issues

11-1. DEFINITIONS.

A. Regular Housing Choice Voucher. Section 8 tenant-based assistance that is provided to eligible families and individuals to assist them in obtaining affordable housing in the private market.

1. The voucher is provided to the family or individual and generally allows the holder to choose any housing that meets the *program requirements.*
2. The vouchers are administered by local Public Housing Agencies (PHAs). The local PHA establishes the payment standard for the vouchers, determines tenant eligibility, certifies tenant income, and calculates the tenant's share of the rent. The payment standard for these vouchers is based on the established Fair Market Rents (FMR) for the area.
3. The payment standard determines the maximum amount of subsidy that may be paid on behalf of an assisted family or individual. The monthly housing assistance payment on behalf of the family or individual is the lesser of the PHA payment standard minus the family total tenant payment (TTP), or the gross rent of the unit minus the family TTP.

The family TTP is the greater of:

- 30 percent of adjusted monthly income;
- 10 percent of gross monthly income;
- the welfare rent in as-paid states; or
- the PHA minimum rent (\$0 - \$50).

In cases where the gross rent exceeds the payment standard, the family is responsible for paying the difference out-of-pocket, in addition to the TTP.

B. Enhanced Voucher. Tenant-based housing assistance used to assist eligible families affected by certain types of housing conversion actions, *called "eligibility events."*

1. Unlike a regular voucher, the subsidy is “enhanced” to cover the difference between the normally applicable payment standard and the possibly higher proposed rent of the unit that is going through the housing conversion action. The payment standard for enhanced vouchers is the gross rent of the unit, provided the PHA determines the gross rent is reasonable in comparison to similar unassisted units in the market area.
 2. Enhanced vouchers have a special minimum rent requirement. The family must continue to contribute towards rent at least the same amount they were paying for rent on the date of the housing conversion action *unless the family suffers a decrease in gross family income of at least 15 percent from gross family income on the date of eligibility event. See PIH Notice 2001-41(HA), Part II C(3)(c)(“Significant Decline in Family Income – Effect on Enhanced Voucher Minimum Rent”).*
 3. The enhanced feature of a voucher is tied to the project in which the housing conversion action took place. If the tenant moves from the project, the enhanced feature is lost and the voucher will have the features of a regular housing choice voucher issued by the PHA.
- C. *Housing Conversion Actions. Upon the occurrence of housing conversion actions that constitute an “eligibility event,” HUD is required to offer enhanced voucher assistance to eligible families. Tenants in other types of housing conversion actions are offered regular housing choice voucher assistance. Housing conversion actions include project-based Section 8 opt-out, preservation prepayment, HUD enforcement actions and HUD property disposition (PD). On November 14, 2001, HUD issued Notice PIH 2001-41(HA) “Section 8 Tenant-Based Assistance (Enhanced and Regular Choice Vouchers) For Housing Conversion Actions – Policy and Processing Guidance.” This Notice outlines policies and processing guidelines for administering vouchers in cases of Housing Conversion Actions. For more information contact the local PIH Office.

A copy of PIH Notice 2001-41(HA) is available on HUDCLIPS.

<http://www.hud.gov/offices/adm/hudclips/> *

11-2. HOUSING CONVERSION ACTIONS.

- A. Opt-outs. This term refers to a conversion action where an owner chooses to opt-out *of the project-based Section 8 program* by not renewing an expiring Section 8 project-based *HAP* contract.
1. To opt-out of the project-based Section 8 program, an owner must satisfy all notification requirements, *including the provision of notice of the proposed HAP contract termination to the tenants and the contract administrator at least one year before termination,* and submit the request and certification to the local HUD Office/Contract Administrator (CA) not less than 120 days before the expiration of the contract.
 2. HUD is committed to protecting families living in assisted units, regardless of the actions a project owner may take. To protect families living in assisted units, *section 524(d) of MAHRA requires HUD, subject

to appropriations, to make enhanced vouchers available to low-income families who, on the date of expiration of the HAP contract, are living in an assisted unit.*

- *3. Owners should refer to HUD Handbook 1378 for guidance regarding HUD real estate acquisition and relocation policy and procedures. Specifically, Chapter 3 contains guidance on planning for and providing appropriate access to relocation assistance and housing for persons with disabilities.*

- B. HUD enforcement actions. In these cases (or in conjunction with a HUD Property Disposition (PD) action), HUD is either terminating the project-based Section 8 HAP contract or not offering the owner the option to renew an expiring contract due to an owner's failure to comply with the terms of the HAP contract or other HUD requirements.

HUD enforcement actions may result from material adverse financial or managerial actions or omissions* as described in Section 13-1.B. of this Guide,* which lead to either owner default under a FHA-insured mortgage (monetary or technical) or a documented material violation of one or more of the obligations under the project's Regulatory Agreement. Regular housing choice vouchers will normally be provided in these circumstances to assist eligible families affected by the enforcement action because property condition or other issues will not allow tenants to remain in the project.

11-3. TENANT PROTECTIONS.

- A. *Importance of the* Process. The process of converting from project-based assistance to tenant-based assistance can produce worry and fear for many families. Therefore, care must be taken to make sure the process is completed correctly and information is made clear and available for all families, owners, and PHAs.
- B. Right to Remain. Tenants who receive an enhanced voucher have the right to remain in their units as long as the units are offered as rental housing. The tenant must have been issued an enhanced voucher sufficient to pay the rent charged for the unit, provided that the rent is reasonable. Owners may not terminate the tenancy of a tenant who exercises this right to remain except for cause under Federal, State or local law. To receive the full rent charged for the unit, the owner must agree to enter into a contract with the local PHA on behalf of each covered family. If an owner refuses to honor the tenants right to remain, the tenant's remedy will be determined by ***the provision of Federal law that provides for the right to remain (i.e., 42 USC § 1437f(t)(1)) and*** on State and local law.
 - 1. The FY 2001 Military Construction and FY 2000 Emergency Supplemental Appropriations law, Pub. L. No. 106-246, Section 2801 (July 13, 2000) amended the enhanced voucher statute passed in the FY 2000 Appropriations Act (USHA Section 8(t), 42 USC Sec. 1437f(t)) and reads: *"...the assisted family may elect to remain in the same project in which the family was residing on the date of the eligibility event for the project ..."*.

2. This protection continues as long as the project is offered as rental housing, absent good cause to terminate tenancy under Federal, State or local law and provided the PHA continues to find the rent reasonable, Owners must continually renew the lease of an enhanced voucher family.
- C. Tenant-Based Eligibility. Only eligible families will receive enhanced vouchers at the time of an opt-out. While a family may be income eligible, they are not automatically eligible for admission to the tenant-based program.
1. The tenant-based assistance program is administered through the Office of Public and Indian Housing (PIH). Some of the eligibility and admissions standards for PIH programs differ from those of project-based Section 8 programs. In some cases, a tenant may be denied assistance under the tenant-based assistance program.
 - a. The PHA will re-certify and screen potentially eligible families and may deny them access to the tenant-based assistance program based on the grounds outlined in the Regulations (24 CFR Part 982.552 and 24 CFR Part 982.553). HUD encourages PHAs to use maximum flexibility during this process, such as setting up repayment agreements for tenants who owe funds to the PHA. However, if a family is ultimately denied assistance, the PHA must give them prompt notice of this decision which includes a brief statement of the reasons for the decision. An informal review can be requested by the family (the process is described in the Regulations, 24 CFR Part 982.554).
 - b. Provided that the owner's current income certification for a tenant is no more than six months old and the PHA determines it is acceptable (through reviewing a small sampling), the PHA may use the owner's most recent tenant income certification in determining eligibility for enhanced vouchers.
 2. In general, to be eligible to receive an enhanced voucher in the case of a regular opt-out (not preceded by a prepayment) the family must be low-income (including very low-income) and residing in a unit covered by the expiring Section 8 contract. *This includes families who may have moved into a vacated unit during the term of the one-year notification period.*
 - a. Unlike in a preservation prepayment situation, a family with an income above 80 percent of *area median income* (AMI) is not eligible for tenant-based assistance as a result of the opt-out.
 - b. In cases of preservation prepayments, *the user must follow the guidance in Notice 2004-17.*
 3. In instances when a new tenant, i.e., a tenant who was not residing in the project when the one-year notification was properly provided, moves into a unit during the one-year tenant notification period, owners are encouraged to add the following provisions, in the form of a lease addendum, to the required model lease: (1) "If the HAP contract terminates for any reason, the lease terminates automatically"; and (2)

“tenants who move into a vacated unit during the one-year notification period **are not** entitled to one-year notice of contract expiration or termination”.

4. Tenants admitted to a PHA’s tenant-based voucher program as a result of a housing conversion action are not subject to the income targeting requirements of the tenant-based Section 8 program.
- D. Processing Delays. If there is any delay in processing the tenant-based assistance, HUD ***must*** ask the owner to consider a short-term renewal of the contract to provide HUD with ***enough*** time to get the vouchers in place.

11-4. OWNER NOTIFICATION REQUIREMENTS.

- A. Law. Section 8(c)(8) of the United States Housing Act requires that owners give a one-year written notice to tenants and HUD of the contract’s termination or expiration. The one-year notification must state the owner’s intentions (i.e., to renew or not renew) at the time of the contract’s expiration.

Note: The one-year notification is not required when an owner is terminating a contract early in order to renew the contract for 20 years or the remaining life of the use agreement.

- B. Format. The notification letter must be:
1. On the owner’s or duly authorized representative’s letterhead and signed.
 2. The notice must be served by delivery directly to each unit in the project or mailed to each tenant ***(the head of household of a unit).***

Note: Taping the Notice to the outside of each unit is not acceptable.

3. If the population of the project speaks a language other than English, owners ***must*** provide the notification letters in the appropriate language(s). The cost of the translation of the letter is an eligible project expense.
- C. Content of Notification Letter. Owners must include certain information in a notification letter. To meet the legal requirements for notification, this Guide provides owners with a sample one-year notification letter for use when an owner intends to opt-out of the project-based Section 8 contract. The sample is Appendix 11-1.
1. Owners must use a letter that contains the language included in the sample letters provided in this Guide.
 2. While owners are not required to specify the reasons for ***opting out***, owners are encouraged to provide as much information as possible to the tenants and HUD.
 3. Owners must state that they will honor the tenants’ right to remain and will continually renew leases as long as:

- The project is offered as rental housing;
 - The PHA continues to find the rent reasonable; and
 - There is no cause for eviction under Federal, State or local law.
4. If an owner states that it intends to renew the contract, *but at a later date* decides to opt-out of the contract, *the owner must provide tenants, HUD, and the CA with a new one-year notification of this change of plans. Tenants, HUD, and the CA must receive a one-year notification of an owner’s decision to opt-out.*
 5. *If an owner elects to go to Recap for a debt restructure and/or rent reduction, upon execution of the Interim-Lite or Interim-Full Contract, the owner must provide a new one-year notification to the tenants.*
 6. *Owners who elect to go to Recap and who decide during the restructuring process that they want to opt out of the project-based Section 8 contract, must provide tenants with a 120-day notice of their decision to opt-out (Sample found at Appendix 11-3). The 120-day notice is in addition to the one-year notice issued upon entry to Recap and discussed in 5 above.*
- D. AE/CA Review. All tenant notification letters must be reviewed by the AE/CA *either before the letters are sent to the tenants or at the time the letters are sent to the tenants in order to confirm* the letters are consistent with the established requirements. *In cases where HUD is not the CA, the owner must send a copy of the notification letter to HUD. Although HUD does not require owners to submit the notification letter for review before issuance, to avoid situations where a faulty notice must be corrected after it has been given to the tenants, owners are encouraged to submit letters for review 30 days in advance of the one-year time period. Absent early submission to the AE/CA, owners must submit the tenant notification letters to the AE/CA and the tenants at the same time.*
- *In cases where an owner issues “intend to renew” letters, no AE/CA action beyond reviewing the letters for established requirements is required. However, if an owner sends “does not intend to renew” letters, the AE/CA must review the letter within 30 days of receipt from the owner. No HUD approval is required before the one-year clock starts; however, if the AE/CA review determines that the letter is not in compliance with HUD requirements, the owner will be notified that a corrected notice must be issued. In these cases, the one-year clock does not begin until the proper notice is provided to HUD, the CA and the tenants. (See Appendix 11-2 for a sample letter)
1. If the AE/CA review determines that the letter is acceptable, no action by the AE/CA is necessary.
 2. If the AE/CA review determines that the letter is unacceptable, the AE/CA will notify the owner that it has failed to provide proper notification to HUD/CA and the tenants.*
- E. Unacceptable Notice. If an owner fails to provide proper one-year notification to HUD/CA and the tenants, the owner must permit the tenants to remain in their units without increasing their portion of the rent for whatever period of time is necessary to meet all of the notification requirements.

1. *Section 524(d)(1) of MAHRA requires HUD to make enhanced voucher assistance available to low-income families residing in an assisted unit in a project consisting of more than four dwelling units upon HAP expiration. Section 524(d)(1) makes no exception for cases in which the owner fails to issue a Notice or in which the Notice issued by the owner does not comport with HUD's regulations.*
 2. *When a HAP contract expires without the proper notice requirement being met, the PHA will still make a determination regarding family eligibility for enhanced voucher assistance.*
 - a. *If the family is eligible and wishes to move from the project, the PHA will immediately provide the family with a voucher in order to do so (the special enhanced provisions do not apply in the case where the family uses the voucher).*
 - b. *If the family is eligible and wishes to stay in the project, the PHA will inform the family and the owner that the assisted tenancy with enhanced voucher assistance will commence as soon as the owner satisfies the proper one-year notice requirements. Since the law provides that the family can remain in the assisted unit with no increase in their portion of the rent until proper notice is given, there is no need for the enhanced voucher assistance to begin before that time.*
 - c. *If the family is not eligible for enhanced voucher assistance, the family may remain in the unit with no increase in their rent payment until the owner satisfies the notice period.*
 3. In instances where the owner intends to opt-out of the Section 8 contract and additional time is needed to meet the full one-year notice period, owners are encouraged to enter into a short-term renewal contract (at current rents) with a term that is sufficiently long to allow the owner to provide the full one-year notice of contract expiration. Unless the owner enters into a short-term renewal contract, the owner will receive only the tenant portion of the rent the families were paying under the expired contract until the full one-year notice period has been met, since the enhanced voucher assisted tenancy will not commence until that time.*
- F. Short-term Contracts. In general, upon execution of a short-term contract, the owner must provide a one-year notification to tenants and HUD/CA. Over the course of this one-year period, the owner and HUD/CA may agree to additional short-term extensions. The owner is not required to provide a new Notice each time a subsequent short-term extension is granted *within* the one year time-frame of the Notice. If the owner accepts another short-term renewal after the 12-month notification period has expired, the owner will be subject to another 12-month notification requirement. Exceptions to this general policy are as follows:
1. Where the owner has fulfilled his/her notification requirement, but agrees to execute a contract for less than one year solely to provide HUD with enough time to provide Section 8 tenant-based assistance, execution of a

short-term contract does not require a new notice requirement because it is granted to protect the tenants.

2. Where an owner provided tenants and HUD with the proper notification of its intent to opt-out and then accepts a short-term renewal to consider accepting a Section 8 contract under the terms of Mark-Up-To-Market *(MUTM)*, the owner shall not be subjected to another one-year notification requirement.
- G. Selection of Option at Contract Expiration. One hundred twenty (120) days before the contract expiration, owners must notify HUD's local Regional Center/Satellite Office Director/CA (whichever is applicable) in writing that they are going to renew or opt-out of their Section 8 contract (as noted in earlier chapters). In cases of an opt-out, HUD needs this time to obtain enhanced vouchers for the eligible families living in the assisted units. At this time, the AE/CA should again contact the owner to explore alternatives to opting out, particularly *MUTM. HUD will renew the contract up until the day the contract expires if the owner decides against opting out.*
- H. *Reserved*
- I. State and Local Requirements. In addition to meeting the above Federal notification requirements, Section 8 project owners *are reminded to* comply with any State or local notification requirements. Owners should check with their appropriate local authorities to find out about such requirements.
- J. Long-Term Contracts. Upon signing a long-term contract renewal, owners are encouraged to notify tenants in writing that they have agreed to a long-term contract renewal agreement with HUD. This letter should inform the tenants that they will receive a one-year written notification of the expiration of the long-term contract.

11-5. *Limited English Proficiency Assistance

Owners must make reasonable efforts to provide language assistance to ensure meaningful access for Limited English Proficiency (LEP) individuals. The housing provider is expected to comply with Executive Order 13166, *Improving Access to Services for Persons with Limited English Proficiency*. In providing owners with guidance on reasonable steps for providing language assistance to tenants, HUD issued on January 22, 2007, *Final Guidance to Federal Financial Assistance Recipients Regarding Title VI Prohibition Against National Origin Discrimination Affecting Limited English Proficient Persons (See 72 CFR Part 2732)*

<http://www.hud.gov/offices/fheo/promotingfh/FederalRegistepublishedguidance.pdf>

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11-6. Effective Communications

*When owners provide written or verbal information to applicants or tenants, they must take steps to ensure effective communication with applicants, residents, and members of the public. HUD's regulation on effective communication with persons with disabilities is found at 24 CFR Part 8.6. Effective communications may include, but are not limited

to, conducting outreach in a manner that will reach persons with disabilities, such as by working with State and local organizations that serve or represent persons with disabilities, and ensuring that information about their programs is disseminated in a manner that is accessible to persons with disabilities. For example, special communication systems (e.g., TTY for persons who are hearing or speech impaired, materials on tape or in Braille) can greatly increase the effectiveness of outreach and ongoing communication.*

ONE-YEAR NOTIFICATION LETTER – OWNER DOES NOT INTEND TO RENEW_____
(Date)

Dear Tenant:

The Department of Housing and Urban Development subsidizes the rent of your apartment through the project-based Section 8 program. Federal law requires that owners provide tenants with a one-year notification before the expiration of a Section 8 contract. The Section 8 contract that pays the government's share of your apartment rent at _____ (*name of project*) expires on _____ (*one year from date of this letter*).

Although there will be no immediate change in your rental assistance, we are required to inform you of our intended actions when the contract expires one year from now.

THIS LETTER IS TO NOTIFY YOU THAT WE DO NOT INTEND TO RENEW THE CURRENT SECTION 8 CONTRACT WHEN IT EXPIRES.

Since we do not intend to renew this project-based contract upon its expiration, it is our understanding that, if Congress makes funds available (which it has in the past and is expected to in the future), the Department of Housing and Urban Development will provide all eligible tenants currently residing in a Section 8 project-based assisted unit with tenant-based assistance. Unlike the current project-based Section 8 contract, Section 8 vouchers are issued to the tenants and allow them to choose the place they wish to rent. The Section 8 voucher program is administered by the local Public Housing Authority. Federal law allows you to elect to continue living at this property provided that the unit, the rent, and we, the owners, meet the requirements of the Section 8 tenant-based assistance program. As an owner, we will honor your right as a tenant to remain at the property on this basis as long as it continues to be offered as rental housing, provided that there is no cause for eviction under Federal, State or local law.

You will also have the opportunity to choose another development or single family house in which to move provided that the new landlord will accept the voucher and the owner and the unit meet Section 8 tenant-based program requirements.

Please remember that project-based Section 8 rental assistance will continue to be provided on your behalf for one year. In addition, we may agree to a renewal of the project-based contract with HUD, thus avoiding contract termination altogether.

Approximately four months (120 days) before the expiration of the Section 8 contract, HUD requires that we confirm our final decision to not renew this contract. Following this confirmation, you will be contacted by the local Public Housing Authority (PHA) to determine your household's eligibility for tenant-based assistance. If you intend to apply for Section 8 tenant-based rental assistance you should not move from your current unit until you have consulted with the local PHA about your eligibility for tenant based assistance.

If you have any questions or would like information on the Section 8 Program, the following sources may be of assistance:

Contract Administrator (if applicable)

Name: _____

Telephone Number: _____

HUD Regional Center

Name: _____

Telephone Number: _____

HUD Web

<http://www.hud.gov> - click on "I want to" and the on "Find Rental Assistance."

Sincerely,

(Owner)_____
(contact info)

cc: Local HUD Office/ _____ (Contract Administrator)

ONE-YEAR NOTIFICATION LETTER – OWNER INTENDS TO RENEW_____
(Date)

Dear Tenant:

The Department of Housing and Urban Development subsidizes the rent of your apartment through the project-based Section 8 program. Federal law requires that owners provide tenants with a one-year notification before the expiration of a Section 8 contract. The Section 8 contract that pays the government's share of your apartment rent at (name of project) expires on (one year from date of this letter).

While there will be no immediate change in your rental assistance, we are required to inform you of our intended actions when the contract expires one year from now.

THIS LETTER IS TO NOTIFY YOU THAT WE INTEND TO RENEW THE CURRENT SECTION 8 CONTRACT WHEN IT EXPIRES.

If Congress makes funds available, which it has in the past and is expected to in the future, we will renew the Section 8 contract. However, in the unlikely circumstance that we cannot renew our contract, it is our understanding that, subject to the availability of funds, HUD will provide all eligible tenants currently residing in a Section 8 project-based assisted unit with tenant-based assistance. If we later decide not to renew the current Section 8 contract when it expires, we will provide you with at least one year of advance notification of this decision.

If you have any questions or would like information on the Section 8 Program, the following sources may be of assistance:

Contract Administrator (if applicable)

Name: _____

Telephone Number: _____

HUD Regional Center

Name: _____

Telephone Number: _____

HUD Web

<http://www.hud.gov> - click on "I want to" and the on "Find Rental Assistance."

Sincerely,

(Owner)_____
(contact info)cc: Local HUD Office/ (Contract Administrator)

RECAP SECOND NOTICE of OPT-OUT – 120- DAYS(Date)

Dear Tenant:

This letter is to notify you that we are continuing with our intent *not* to renew the current Section 8 contract when it expires as stated in the one-year notification letter provided to you on (insert date of one-year notification letter).

Since we do not intend to renew this project-based contract upon its expiration, it is our understanding that, if Congress makes funds available (which it has in the past and is expected to in the future), the Department of Housing and Urban Development will provide all eligible tenants currently residing in a Section 8 project-based assisted unit with tenant-based assistance. Unlike the current project-based Section 8 contract, Section 8 vouchers are issued to the tenants and allow them to choose the place they wish to rent. The Section 8 voucher program is administered by local Public Housing Authorities. Federal law allows you to elect to continue living at this project provided that the unit, the rent, and we, the owners, meet the requirements of the Section 8 tenant-based assistance program. As an owner, we will honor your right as a tenant to remain at the project on this basis as long as it continues to be offered as rental housing, provided that there is no cause for eviction under Federal, State or local law.

You will also have the opportunity to choose another development or single family house in which to move provided that the new landlord will accept the voucher and the owner and the unit meet Section 8 tenant-based program requirements.

Please remember that project-based Section 8 rental assistance will continue to be provided on your behalf until (one year from date of one-year notification letter). In addition, we may agree to a renewal of the contract with HUD, thus avoiding contract termination altogether. However, if we do not agree to a renewal, and if we continue with our intent not to renew the current Section 8 contract, as stated above, you will be contacted and provided with additional information.

If you have any questions or would like information on the Section 8 Program, the following sources may be of assistance:

Contract Administrator (if applicable)

Name: _____

Telephone Number: _____

HUD Regional Center

Name: _____

Telephone Number: _____

HUD Web

<http://www.hud.gov> - click on "I want to" and the on "Find Rental Assistance."

Sincerely,

(Owner)_____
(contact info)cc: Local HUD Office/Contract Administrator